

ASSEMBLY BILL

No. 2502

Introduced by Assembly Member Brownley

February 19, 2010

An act to amend Section 437c of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2502, as introduced, Brownley. Civil actions: summary judgment.

Existing law sets forth the conditions and requirements for filing a motion for summary judgment, as specified. Existing law requires that notice of a motion for summary judgment and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. Existing law permits a party to move for summary adjudication of one or more causes of action, affirmation defenses, claims for damages, or issues of duty.

This bill would make technical, nonsubstantive changes in these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 437c of the Code of Civil Procedure is
- 2 amended to read:
- 3 437c. (a) ~~Any~~A party may move for summary judgment in
- 4 ~~any~~an action or proceeding if it is contended that the action has
- 5 no merit or that there is no defense to the action or proceeding.
- 6 The motion may be made at any time after 60 days have elapsed

1 since the general appearance in the action or proceeding of each
2 party against whom the motion is directed or at any earlier time
3 after the general appearance that the court, with or without notice
4 and upon good cause shown, may direct. Notice of the motion and
5 supporting papers shall be served on all other parties to the action
6 at least 75 days before the time appointed for hearing. However,
7 if the notice is served by mail, the required 75-day period of notice
8 shall be increased by five days if the place of address is within the
9 State of California, 10 days if the place of address is outside the
10 State of California but within the United States, and 20 days if the
11 place of address is outside the United States, and if the notice is
12 served by facsimile transmission, Express Mail, or another method
13 of delivery providing for overnight delivery, the required 75-day
14 period of notice shall be increased by two court days. The motion
15 shall be heard no later than 30 days before the date of trial, unless
16 the court for good cause orders otherwise. The filing of the motion
17 shall not extend the time within which a party must otherwise file
18 a responsive pleading.

19 (b) (1) The motion shall be supported by affidavits, declarations,
20 admissions, answers to interrogatories, depositions, and matters
21 of which judicial notice shall or may be taken. The supporting
22 papers shall include a separate statement setting forth plainly and
23 concisely all material facts ~~which~~ *that* the moving party contends
24 are undisputed. Each of the material facts stated shall be followed
25 by a reference to the supporting evidence. The failure to comply
26 with this requirement of a separate statement may in the court's
27 discretion constitute a sufficient ground for denial of the motion.

28 (2) Any opposition to the motion shall be served and filed not
29 less than 14 days preceding the noticed or continued date of
30 hearing, unless the court for good cause orders otherwise. The
31 opposition, where appropriate, shall consist of affidavits,
32 declarations, admissions, answers to interrogatories, depositions,
33 and matters of which judicial notice shall or may be taken.

34 (3) The opposition papers shall include a separate statement
35 that responds to each of the material facts contended by the moving
36 party to be undisputed, indicating whether the opposing party
37 agrees or disagrees that those facts are undisputed. The statement
38 also shall set forth plainly and concisely any other material facts
39 that the opposing party contends are disputed. Each material fact
40 contended by the opposing party to be disputed shall be followed

1 by a reference to the supporting evidence. Failure to comply with
2 this requirement of a separate statement may constitute a sufficient
3 ground, in the court's discretion, for granting the motion.

4 (4) Any reply to the opposition shall be served and filed by the
5 moving party not less than five days preceding the noticed or
6 continued date of hearing, unless the court for good cause orders
7 otherwise.

8 (5) Evidentiary objections not made at the hearing shall be
9 deemed waived.

10 (6) Except for subdivision (c) of Section 1005 relating to the
11 method of service of opposition and reply papers, Sections 1005
12 and 1013, extending the time within which a right may be exercised
13 or an act may be done, do not apply to this section.

14 (7) Any incorporation by reference of matter in the court's file
15 shall set forth with specificity the exact matter to which reference
16 is being made and shall not incorporate the entire file.

17 (c) The motion for summary judgment shall be granted if all
18 the papers submitted show that there is no triable issue as to any
19 material fact and that the moving party is entitled to a judgment
20 as a matter of law. In determining whether the papers show that
21 there is no triable issue as to any material fact the court shall
22 consider all of the evidence set forth in the papers, except that to
23 which objections have been made and sustained by the court, and
24 all inferences reasonably deducible from the evidence, except
25 summary judgment may not be granted by the court based on
26 inferences reasonably deducible from the evidence, if contradicted
27 by other inferences or evidence, which raise a triable issue as to
28 any material fact.

29 (d) Supporting and opposing affidavits or declarations shall be
30 made by any person on personal knowledge, shall set forth
31 admissible evidence, and shall show affirmatively that the affiant
32 is competent to testify to the matters stated in the affidavits or
33 declarations. Any objections based on the failure to comply with
34 the requirements of this subdivision shall be made at the hearing
35 or shall be deemed waived.

36 (e) If a party is otherwise entitled to a summary judgment
37 pursuant to this section, summary judgment may not be denied on
38 grounds of credibility or for want of cross-examination of witnesses
39 furnishing affidavits or declarations in support of the summary
40 judgment, except that summary judgment may be denied in the

1 discretion of the court, where the only proof of a material fact
2 offered in support of the summary judgment is an affidavit or
3 declaration made by an individual who was the sole witness to that
4 fact; or where a material fact is an individual's state of mind, or
5 lack thereof, and that fact is sought to be established solely by the
6 individual's affirmation thereof.

7 (f) (1) A party may move for summary adjudication as to one
8 or more causes of action within an action, one or more affirmative
9 defenses, one or more claims for damages, or one or more issues
10 of duty, if that party contends that the cause of action has no merit
11 or that there is no affirmative defense thereto, or that there is no
12 merit to an affirmative defense as to any cause of action, or both,
13 or that there is no merit to a claim for damages, as specified in
14 Section 3294 of the Civil Code, or that one or more defendants
15 either owed or did not owe a duty to the plaintiff or plaintiffs. A
16 motion for summary adjudication shall be granted only if it
17 completely disposes of a cause of action, an affirmative defense,
18 a claim for damages, or an issue of duty.

19 (2) A motion for summary adjudication may be made by itself
20 or as an alternative to a motion for summary judgment and shall
21 proceed in all procedural respects as a motion for summary
22 judgment. However, a party may not move for summary judgment
23 based on issues asserted in a prior motion for summary adjudication
24 and denied by the court, unless that party establishes to the
25 satisfaction of the court, newly discovered facts or circumstances
26 or a change of law supporting the issues reasserted in the summary
27 judgment motion.

28 (g) Upon the denial of a motion for summary judgment, on the
29 ground that there is a triable issue as to one or more material facts,
30 the court shall, by written or oral order, specify one or more
31 material facts raised by the motion as to which the court has
32 determined there exists a triable controversy. This determination
33 shall specifically refer to the evidence proffered in support of and
34 in opposition to the motion—~~which~~ *that* indicates that a triable
35 controversy exists. Upon the grant of a motion for summary
36 judgment, on the ground that there is no triable issue of material
37 fact, the court shall, by written or oral order, specify the reasons
38 for its determination. The order shall specifically refer to the
39 evidence proffered in support of, and if applicable in opposition
40 to, the motion—~~which~~ *that* indicates that no triable issue exists. The

1 court shall also state its reasons for any other determination. The
2 court shall record its determination by court reporter or written
3 order.

4 (h) If it appears from the affidavits submitted in opposition to
5 a motion for summary judgment or summary adjudication or both
6 that facts essential to justify opposition may exist but cannot, for
7 reasons stated, then be presented, the court shall deny the motion,
8 or order a continuance to permit affidavits to be obtained or
9 discovery to be had or may make any other order as may be just.
10 The application to continue the motion to obtain necessary
11 discovery may also be made by ex parte motion at any time on or
12 before the date the opposition response to the motion is due.

13 (i) If, after granting a continuance to allow specified additional
14 discovery, the court determines that the party seeking summary
15 judgment has unreasonably failed to allow the discovery to be
16 conducted, the court shall grant a continuance to permit the
17 discovery to go forward or deny the motion for summary judgment
18 or summary adjudication. This section does not affect or limit the
19 ability of any party to compel discovery under the Civil Discovery
20 Act (Title 4 (commencing with Section 2016.010) of Part 4).

21 (j) If the court determines at any time that any of the affidavits
22 are presented in bad faith or solely for purposes of delay, the court
23 shall order the party presenting the affidavits to pay the other party
24 the amount of the reasonable expenses ~~which~~ *that* the filing of the
25 affidavits caused the other party to incur. Sanctions may not be
26 imposed pursuant to this subdivision, except on notice contained
27 in a party's papers, or on the court's own noticed motion, and after
28 an opportunity to be heard.

29 (k) Except when a separate judgment may properly be awarded
30 in the action, no final judgment may be entered on a motion for
31 summary judgment prior to the termination of the action, but the
32 final judgment shall, in addition to any matters determined in the
33 action, award judgment as established by the summary proceeding
34 herein provided for.

35 (l) In actions ~~which~~ *that* arise out of an injury to the person or
36 to property, if a motion for summary judgment was granted on the
37 basis that the defendant was without fault, no other defendant
38 during trial, over plaintiff's objection, may attempt to attribute
39 fault to or comment on the absence or involvement of the defendant
40 who was granted the motion.

(m) (1) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section, except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(2) Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs. The supplemental briefing may include an argument that additional evidence relating to that ground exists, but that the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefing to allow the parties to present additional evidence or to conduct discovery on the issue. If the court fails to allow supplemental briefing, a rehearing shall be ordered upon timely petition of any party.

(n) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion ~~which~~ *that* has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative

1 defense, claim for damages, or issue of duty as to which summary
2 adjudication was either not sought or denied.

3 (3) In the trial of an action, neither a party, nor a witness, nor
4 the court shall comment upon the grant or denial of a motion for
5 summary adjudication to a jury.

6 (o) A cause of action has no merit if either of the following
7 exists:

8 (1) One or more of the elements of the cause of action cannot
9 be separately established, even if that element is separately pleaded.

10 (2) A defendant establishes an affirmative defense to that cause
11 of action.

12 (p) For purposes of motions for summary judgment and
13 summary adjudication:

14 (1) A plaintiff or cross-complainant has met his or her burden
15 of showing that there is no defense to a cause of action if that party
16 has proved each element of the cause of action entitling the party
17 to judgment on that cause of action. Once the plaintiff or
18 cross-complainant has met that burden, the burden shifts to the
19 defendant or cross-defendant to show that a triable issue of one or
20 more material facts exists as to that cause of action or a defense
21 thereto. The defendant or cross-defendant may not rely upon the
22 mere allegations or denials of its pleadings to show that a triable
23 issue of material fact exists but, instead, shall set forth the specific
24 facts showing that a triable issue of material fact exists as to that
25 cause of action or a defense thereto.

26 (2) A defendant or cross-defendant has met his or her burden
27 of showing that a cause of action has no merit if that party has
28 shown that one or more elements of the cause of action, even if
29 not separately pleaded, cannot be established, or that there is a
30 complete defense to that cause of action. Once the defendant or
31 cross-defendant has met that burden, the burden shifts to the
32 plaintiff or cross-complainant to show that a triable issue of one
33 or more material facts exists as to that cause of action or a defense
34 thereto. The plaintiff or cross-complainant may not rely upon the
35 mere allegations or denials of its pleadings to show that a triable
36 issue of material fact exists but, instead, shall set forth the specific
37 facts showing that a triable issue of material fact exists as to that
38 cause of action or a defense thereto.

39 (q) This section does not extend the period for trial provided by
40 Section 1170.5.

1 (r) Subdivisions (a) and (b) do not apply to actions brought
2 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
3 of Part 3.

4 (s) For the purposes of this section, a change in law does not
5 include a later enacted statute without retroactive application.

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